

FIVE FEDERAL LAWS AND THE NATIONAL COMPACT

Interstate Compact on the Placement of Children (ICPC)

The Interstate Compact on the Placement of Children is the only statutory mechanism judges have to ensure that children in foster care or adoptive placements who are placed across state lines are protected and provided proper services. The ICPC is necessary because a state's jurisdiction ends at its borders. A state can only compel an out-of-state agency or individual to discharge its obligations toward a child through an interstate compact.

The ICPC has been adopted verbatim by all 50 states, the District of Columbia, and the U.S. Virgin Islands. The ICPC establishes procedures and assigns obligations for those responsible for the placement of children. The law generally requires that courts follow the procedures and provisions of the ICPC.

Judges and magistrates must never authorize a child to be placed in another state except in accordance with the ICPC. Placements made in violation of the ICPC are illegal placements and the receiving state has no legal obligation to provide services for the child; perform safety visits; or guarantee the child's health, safety, and well-being. The consequences of an illegal placement extend beyond the child's safety being in jeopardy. The child will have to return to the state of Florida before the receiving state will approve a home study on the proposed placement resource, which for an illegal placement can take even longer than usual. Illegal placements delay permanency and uproot the child unnecessarily.

The key provisions ensure:

- The child is placed in a suitable environment and supervised, if requested.
- The receiving state has the opportunity to assess proposed placements.
- The sending state obtains adequate information so that a placement may be evaluated.
- The appropriate jurisdictional arrangements are made for the care of the child, including financial support.

When placing a child under ICPC:

- There are three types of ICPC placement requests:
 - 1) **Regular ICPC** (Regulation 2) - child to be placed in another state with a parent, relative, non-relative, foster care, or for adoption. Many states require relatives to be licensed as a foster home prior to placement.
 - 2) **Expedited ICPC** (Regulation 7) - child to be placed with a parent, stepparent, grandparent, adult uncle or aunt, adult brother or sister, or guardian and child is a)

Judges should be aware that making placements under the ICPC can take a long time – often several months. Under certain circumstances, Regulation 7 of the Compact can be used to speed placements that are considered a priority. Children should not be placed out-of-state before completion of ICPC approval, as there can be negative consequences for the child and the professionals who authorize the placement. See *Making it Permanent*, Fiermonte and Renne, 2002
http://apps.americanbar.org/child/rclji/making_it_permanent.pdf.

four years or younger, or b) one child sought to be placed has a substantial relationship with the prospective placement, or c) it is an unexpected dependency due to death or sudden illness of the caregiver, or d) the child is in shelter care (not placed with a relative). An order of compliance with the ICPC is required for an expedited request.

- 3) **Intact Family Placement** (Regulation 1) - the child has been placed in through an approved Florida home study and the family wishes to move to another state. The family can move prior to the approval of the other state, but the receiving state must ultimately approve the family remaining.
- Under Regulation 2 (regular) and Regulation 7 (expedited) of the ICPC, prior to ordering an ICPC home study, the court must make a finding that a case manager has confirmed with the prospective placement that:
 - 1) he or she is interested in being a placement resource for the child,
 - 2) the name, correct address, telephone number, and date of birth of the prospective placement,
 - 3) the name, correct address, telephone number, and contact information of all adults in the home,
 - 4) the number of bedrooms and number of adults and children to be residing in the home if the child is placed,
 - 5) the prospective placement has sufficient financial resources or will access financial resources to feed, clothe, and care for the child include child care, if needed
 - 6) the prospective resource acknowledges that a criminal records and child abuse history check will be completed on any person residing in the home required to be screened under the law of the receiving state
 - Prior to completion of the home study, review the case frequently to ensure that the home study request has been timely sent to the receiving state.
 - At each regularly scheduled hearing, inquire as to the status of the home study request.
 - After placement of the child in accordance with the ICPC, review the child's status frequently as well as at each regularly scheduled hearing.
 - To avoid delays in permanency for the child, order that the department request a pre-adoptive home study on the child.
 - Remember that young children sent to another state are more difficult to reunify because visitation is complicated by the placement.

When the ICPC does apply. Assuming the court has jurisdiction over the child being placed, the types of cases subject to the ICPC include:

- Birth parent unification or reunification in another state; C.K. Department of Children and Families, 949 So. 2d 336 (Fla. 4th DCA 2007) (The court transferred custody of the child to an out-of-state non-custodial parent); Department of Children and Families v. Benway, 745 So. 2d 437 (Fla. 5th DCA 1999) (The ICPC is applicable to an out-of-state placement of a dependent child with a natural parent.)
- Kinship care by a relative; Department of Children and Families v. Fellows, 895 So. 2d 1181 (Fla. 5th DCA 2005) (The ICPC applies to relatives of a dependent child, in this case, the aunt.)

- Foster family care in another state when the placement will last more than 30 days;
- Foster group home care when the placement will last more than 30 days;
- Placement in a residential treatment facility in another state by a parent, agency, or court;
- Placement pending a domestic adoption between states by a public agency, licensed child-placing agency, or an independent/private attorney, parent, or intermediary; and a child is adopted within the United States.

When the ICPC does not apply. The Compact shall not apply to:

- The sending or bringing of a child into a receiving state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or non-agency guardian in the receiving state;
- Any placement, sending, or bringing of a child into a receiving state, pursuant to any other interstate compact, to which both the state from which the child is sent or brought and the receiving state are a party, or any other agreement between said states which has the force of law;
- Birth parent to birth parent placements, when no court has assumed jurisdiction of the child to be placed;
- Birth parent to relative placements and relative to relative placements (enumerated as parent, stepparent, grandparent, adult sibling, adult aunt or uncle), when no court has assumed jurisdiction of the child to be placed;
- Relative to birth parent placements, when no court has assumed jurisdiction of the child to be placed;
- A child who is admitted to any hospital or other medical facility for acute care (ICPC applies to treatment for chronic care); to any institution that cares for the mentally ill, mentally defective, or epileptic; or to a school;
- Divorce custody investigations involving home studies in Florida;
- International adoption when INS has issued an IR-3 visa for the child being adopted in the child's country of origin;
- Requests received through International Social Services or any of its branch offices for home studies or social services;
- Tribal placements (See [Indian Child Welfare Act section](#)); and
- Visits (generally not longer than 30 days except during the traditional school summer vacation from the end of the school period to the beginning of school in the fall).

Receiving states: The ICPC requires that the receiving state evaluate the placement before the child is placed and then monitor the placement to protect the child. If a placement is determined to be inappropriate, the child cannot be placed in the receiving state.
Department of Children and Families v. Fellows, 895 So. 2d 1181 (Fla. 5th DCA 2005).

If a child is being sent to another state for a summer visit, the child must physically return to Florida after the visit or else the visit will constitute an illegal placement. The ICPC does not require that the sending agency have custody of the child, but there must be active exercise of court jurisdiction.

- Placement is defined as “the arrangement for the care of a child.” § 409.401, Article II(d).

- The sending agency is responsible for “furnishing the appropriate authorities in the receiving state...a full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.” § 409.401, Article III(b)(4).
- A court must ensure that interstate placements are made pursuant to ICPC requirements, even if custody remains with the parent(s). § 409.401, Article V(a).

The differences between a visit and a placement.

Visits	Placements
<ul style="list-style-type: none"> ➤ Do not extend beyond 30 days. ➤ Are social experiences of short duration. 	<ul style="list-style-type: none"> ➤ Are longer than 30 days. ➤ Include short visits granted with the hope or intention to place. ➤ Include circumstances where the duration of the stay is unclear. ➤ Include stays that do not have an express end date.

A request for a home study or supervision, made by the person or agency that sends or proposes to send a child on a visit that is pending at the time that the visit is proposed, will establish a rebuttable presumption that the intent of the stay or proposed stay is not a visit. ICPC Regulation 9. In Department of Children and Families v. S.D., 921 So. 2d 801 (Fla. 1st DCA 2006), the First District Court of Appeal vacated an order that placed a child with her mother in Georgia. The placement was not a “visit” under ICPC without the consent of the appropriate public authorities of Georgia. *Id.*

Summer visits. Generally, a school-aged child may go for a summer visit provided the beginning and ending date of the visit are set forth in the order authorizing the visit. The beginning date of the visit must not be earlier than the date school ends. The ending date of the visit must be prior to the date school starts again in the fall. A visit may not be extended or renewed in a manner that causes or will cause it to exceed thirty (30) days or the school vacation period. If a stay does not from the outset have an express end date, or if its duration is not clear from the circumstances, it shall be considered a placement or proposed placement and not a visit. ICPC Regulation 9.

Residential placements. Residential placements are subject to the ICPC; however, certain exemptions apply:

- Primary educational institutions: “means an institution that operates one or more programs offered in satisfaction of compulsory school attendance laws, in which the primary purpose of accepting children is to meet their educational needs; and which does not do one or more of the following:
 - accept responsibility for children during the entire year;

- provide or hold itself out as providing child care constituting nurture sufficient to substitute for parental supervision, control, or foster care; or
 - provide any other services to children, except for those customarily regarded as extracurricular or co-curricular school activities, pupil support services, and those services necessary to make it possible for the children to be maintained on a residential basis in the aforementioned school program or programs.” ICPC Regulation 4(1)(a).
- Hospital or other medical facility: institutions for the acutely ill in which the child is placed for the treatment of an acute medical problem and that do not provide child care in substitution for parental care or foster care. ICPC Regulation 4(1)(a)(3)(b).
 - Institution for mentally ill or mentally defective minors (developmentally disabled): medical and psychiatric institutions for the treatment of acute conditions. Treatment includes necessary custodial care. However, “treatment for a chronic mental or behavioral condition...that is 24-hour care away from the child’s parental home is foster care as such term is used in Article III of ICPC.” ICPC Regulation 4(1)(a)(3)(c).

ICPC and the Indian Child Welfare Act. ICPC does not apply to interstate placements of an Indian child if the placement is being made within an Indian reservation unless the tribe:

- requests ICPC services;
- has adopted ICPC or incorporated its provisions; or
- has an existing Title IV-E agreement with the state requiring ICPC compliance.

Florida’s Compact Administrator. Florida’s Compact Administrator is Courtney Lee at DCF. She can be contacted at (850) 717-4007.